MR. UPHAM'S SPEECH

ON THE

EXTENSION OF SLAVERY:

TOGETHER WITH THE

ORDINANCE OF 1787.

1849.

SPEECH

OF

CHARLES W. UPHAM,

OF SALEM,

IN THE

House of Representatives

OF

MASSACHUSETTS,

ON THE

COMPROMISES OF THE CONSTITUTION:

WITH AN

APPENDIX, CONTAINING

THE

ORDINANCE OF 1787.

SALEM:
Printed at the Tri-Weekly Gazette Office.
1849.

HOUSE OF REPRESENTATIVES — Feb. 20, 1849.

In the House, at 12 o'clock, by special assignment, the resolves concerning the Extension of Slavery were taken up, viz:

1st—Senate resolves, four in number, concerning slavery and the slave trade.

2d—Resolves, six in number, proposed by Mr. Upham, of Salem, concerning the extension of Slavery.

3d—Resolves, six in number, reported by the House judiciary committee, concerning slavery and the slave trade, and submitted in place of the Senate resolves, with the same title.

4th—Resolves, six in number, proposed by Mr. Hopkins, of Northampton, as a substitute for the committee's resolves.

The question before the House was on ordering to a third reading the House Committee resolves (No. 3,) which were as follows:

RESOLVES CONCERNING SLAVERY AND THE SLAVE TRADE.

Resolved, That, in the present posture of the deliberations of Congress upon the subject of slavery in the territories of the Union, Massachusetts will fail to do her duty if she do not again utter her sentiments upon the subject of those deliberations.

Resolved, That Congress has full power to legislate upon the subject of slavery in the territories of the Union; that it has freely exercised such power from the adoption of the Constitution to the present time, and that it is its duty to exercise the power for the perpetual exclusion of the institution from those territories that are free, and for the extinction of the same in territories where it exists.

Resolved, That, when Congress furnishes governments for the territories of California and New Mexico, it will be its duty to establish therein the fundamental principle of the ordinance of 1787 upon the subject of slavery, to the end that the institution may be perpetually excluded therefrom beyond every chance and uncertainty.

Resolved, That neither slavery nor the slave trade ought to exist in the District of Columbia, and that it is the duty of Congress to devise the most just, practicable, and expeditious mode for abolishing the same.

Resolved, That the legislation pointed out in the foregoing Resolves does not violate, but pursues, the compromises between the North and South, that secured the adoption of the Constitution; and that, as our forefathers intended to secure the non-extension of slavery, while they were seeking to establish the Union, so we, their descendants, in seeking to secure the non-extension of slavery, are acting in the very spirit in which that Union was founded.

Resolved, That his Excellency the Governor be requested to transmit copies of these Resolves to our Senators and Representatives in Congress, to be by them laid before the two houses of Congress, as an expression of the sentiments and wishes of the people of Massachusetts.

Mr. Upham moved to amend the foregoing resolves by strik-

ing out the fifth and substituting therefor the following, (No. 2) proposed by him some days before, on which he spoke.

RESOLVES CONCERNING THE EXTENSION OF SLAVERY.

Resolved, That when the Constitution of the United States was framed and adopted, it was well understood, by all who participated in that compact, that no efforts should ever be made, by the slave-holding States to extend their peculiar institution, but that its gradual and final removal was an object contemplated with faith and hope by the patriotism and philanthropy of the south as well as of the north.

Resolved, That, on the strength of assurances given by the slave-holding States, to this effect, the free States entered into their obligations under the Constitution.

Resolved, That the avowed determination of the slave-holding States to extend the area of slavery, is therefore, a violation of the compromises of the Constitution; and that the determination of the people of Massachusetts, to resist the extension of slavery, is entirely consistent with the sentiments that prevailed, and the arrangements that were made in framing the compact upon which the American Union was founded.

Resolved, That, as Massachusetts bore a conspicuous and responsible part in establishing the Union of these States, upon the understanding above mentioned, it is her high and peculiar duty, while she is faithful to the engagements, into which the free States then entered, under her lead, to hold the slave States to the pledges they gave, in the ordinance of 1787, and in the debates and deliberations that resulted in the adoption of the Constitution, to relinquish all claim to extend the institution of slavery, beyond their own limits, into the common territorial possessions of the Union.

Resolved, That, with these views we, the people of Massachusetts, assembled in this great and General Court, hereby pronounce the attempt, by the southern States, or any portion of them, or any parties therein, to establish the institution of slavery upon territory now free, and the common property of the United States, a violation of the compromises of the Constitution;—and we also do request our representatives, and instruct our senators, in Congress, to use their utmost exertions, consistent with fidelity to the Constitution, to resist, under all circumstances and at all times, the extension of slavery.

Mr. Speaker—When, on the organization of the House, at the opening of the session, you, Sir, took the chair, to which it was our pleasure to call you, and which you have occupied to the high satisfaction of every member on this floor, among other suggestions which commended themselves to the good sense of those who heard you, and of the people, you expressed a just disapprobation of the practice of State Legislatures overleaping their established boundaries, and meddling with matters that properly belong to the General Government. In some of our sister States it is too much the custom for the Legislatures to dictate in reference to pending measures of national policy. We are not the constituents of members of the House of Representatives, in the Capitol, at Washington. The

people, who sent us here, have sent them there. They must do their business—we must do ours—and there must be no interference. We are not to rush madly into each other's spheres, but move on in our distinct and separate orbits.

These remarks apply to all subjects but one. That of Slavery is an exception to them. For reasons which I propose to give to the House, I deem it to be, in the present crisis of our Union, the duty of the free States, to speak and act, *as States*. This is pre-eminently, the duty of Massachusetts. We all know in what violence of complaint a portion of the people of the southern States have long been indulging, because the people of the free States are opposing the extension of Slavery beyond its present limits, and with what impassioned declamation they charge us with violating what they call the compromises of the Constitution. It is my purpose to show that the southern States have no grounds whatever for their complaints; and that the violations of the compromises of the constitution have all been on their side. I think, Sir, that the true strength of the cause of the free States, in this great controversy, has never yet been put forth, and that none of our politicians, nor even our abolition orators, have taken strong ground enough, or high ground enough. So far is it from being true that we have violated the compromises of the constitution in opposing the extension of slavery, and insisting upon what is termed the Wilmot proviso, (it deserves, Mr. Speaker, a better and more glorious name, being in truth the Jefferson proviso,) that, on the contrary, the very proposal to extend the institution is, itself, a breach of the contract, an infraction of the plighted faith, on which the Union was founded.

So far as the compromises of the Constitution are expressed, in the literal text, and on the face, of that instrument, Mr. Calhoun has enumerated them very fully and accurately, in the following paragraph, of his address, in the name of certain southern members of Congress, to his and their constituents, just published in Washington:

'Not to go further back, the difference of opinion and feeling in reference to the relation between the two races, disclosed itself in the convention that framed the Constitution, and constituted one of the greatest difficulties in forming it. After many efforts it was overcome by a compromise, which provided, in the first place, that representatives and direct taxes shall be apportioned among the States, according to their respective numbers; and that in ascertaining the number of each, five slaves shall be estimated as three. In the next, that slaves escaping into States where slavery does not exist, shall not be discharged from servitude, but shall be delivered up on claim of the party to whom their labor or service is due. In the third place, that Congress shall not prohibit the importation of slaves before the year 1808: but a tax not exceeding ten dollars, may be imposed on each imported.' And finally, that no capitation or direct tax shall be laid, but in proportion to federal numbers; and that no amendment of the Constitution, prior to 1808, shall affect this provision, nor that relating to the importation of slaves."

The three-fifths ratio cannot, in a strict sense, perhaps, be reckoned among the compromises of the Constitution, as it had been established some years before. It was a compromise not of the Constitution, but of the Confederation. It was agreed upon, on the 1st of April, 1783, in the old Congress, as the basis of *taxation*. The struggle, at the time of its original adoption, was, on the part of the free States, to have the whole number of slaves counted in the apportionment of assessments upon the southern members of the Confederacy, and on the part of the latter, not to have them counted at all. The result was that the free States prevailed so far as to have it agreed that slaves should be counted, in fixing the basis of taxation, by the three-fifths rule.

In the convention that framed the Constitution of the United States, between four and five years afterwards, when the basis of *representation* was to be determined, the contest in reference to how slaves ought to be counted was renewed, but it was reversed. The South tried to have the whole number counted, and the North tried to reduce the fraction as low as possible. But it was the dictate of obvious justice, that what had been agreed upon when the question was one of *taxation*, ought to be adhered to when the question became one of *representation*. The ratio of three-fifths was not, therefore, an arrangement made at the foundation of the Constitution, but it had already been established and acquiesced in, and was simply continued in operation.

What is said of a capitation tax is merely another form, in

fact, a repetition, under different terms, of the three-fifths ratio. So that all that remains of Mr. Calhoun's definition of the compromises of the Constitution, are the two following items. The provision in reference to fugitive slaves, and the grant, to Congress, of the power to prohibit the importation of slaves in and after 1808, and in the mean time, that is previous to 1808, of imposing a tax, not exceeding ten dollars, upon each imported slave. Now a compromise necessarily involves the idea of *mutual concession*. We all understand,—it was then, and ever has been well understood,—how the consent by the free States to have fugitive slaves retaken within their limits, was a concession by them to the slave States. It will appear, in the sequel of my argument, how it was then supposed and understood, that giving power to Congress to levy a duty of ten dollars on an imported slave, or to forbid the importation altogether, was a corresponding and equivalent concession by the slave States to the free States. It was understood to provide the means for the reduction, removal, and final abolition of slavery.

The compromises of the Constitution consisted of an interchange of obligations. The free States said to the slave States, we will allow you to pursue, recover, and carry back your slaves, if as fugitives they are found in our borders. We will so far recognize and protect your property. The slave States said, on their part, we have already in the Ordinance of 1787, agreed to relinquish all claim to carry our slaves into the common territorial possessions of the Union, and we now agree to favor, if not provide for, the gradual and final removal of the slave institution from the land. If I can succeed in making out and establishing this proposition, it will be seen that it puts a new face upon the whole matter, and that it places the free States upon ground higher and stronger than they have yet occupied, upon which all of them, and all parties in them, can stand, and from which they can command the acquiescence of the South, not as a matter of will or sentiment only —not by mere strength and power, but as a point of honor, and the fulfilment of an agreement.

Some five years ago (Acts of 1843, March 24,) a law was passed in this Commonwealth, forbidding judges, or justices of the peace, or sheriffs, jailers, constables or other officers of the State, to take any part, or render any facilities, in the capture or detention of fugitive slaves. Of this law, as a citizen, I then disapproved, and had I been here, I should have voted against it. I entertained, at that time, the prevalent views respecting the compromises of the Constitution, and I thought the law of which I am speaking, a violation of them. But, sir, shortly after the passage of that law, I was led to study the subject in its historical sources, and were such a law now before us, I should vote for it. The moment the southern States entered upon the policy of endeavoring to extend the area of slavery, they violated the understanding upon the strength of which the free States originally agreed to the article respecting fugitive slaves, and they justified us in disembarrassing ourselves, as far as possible, of our obligations touching that point.

I now proceed to present to the House the historical argument upon which the Resolutions before it rest.

On the 1st of March, 1784, Virginia, by an act of cession, (Henning's Statutes of Virginia, vol. xi. p. 566,) conveyed to the United States, to be their joint and common property, its territory northwest of the Ohio, an extent of country (Mass. Hist. Coll. 2d series, vol. i. p. 186, Letter from Richard Henry Lee to Samuel Adams.) greater than what remained to her, that is, greater than Virginia and Kentucky, and in climate and soil, far preferable. She made this noble benefaction to her sister States, for the express purpose of cementing their union, and she called upon other States to follow her example, and throw their remote and unoccupied lands into the common stock. This was previous to the formation of the present Constitution, and the old Congress, as it was called, managed, at that time, the common interests of the Confederacy. Among those interests, none were felt to be more important than to lay wise and beneficent foundations of society and govern-

ment for the great and populous States which, as was then foreseen, would rise over the broad and fertile regions of the North Western Territory. At that time, the best minds of the South, as I shall show, were as deeply impressed with the evils and the woes of slavery, as any of the philanthropists of our day, and it was felt by them to be of the highest importance to prevent the blighting curse from desolating the opening regions beyond the Ohio.

On the 1st of March, 1784, a committee of Congress, consisting of Thomas Jefferson of Virginia, and Messrs. Chase of Maryland, and Howell of Rhode Island, reported a plan for the temporary government of the Western Territory. The document was from the pen of Jefferson, and contained the following provision :—

"After the year 1800, of the Christian era, there shall be neither slavery nor involuntary servitude in any of the said States, otherwise than in punishment of crimes, whereof the party shall have been duly convicted to have been personally guilty."

On the 19th of April, the above clause was struck out. The slave States took the ground then, as they do now, that they would not consent to be prohibited from going, with their property and peculiar institution, on equal terms, into territory that was the common property of the whole Union.

On the 16th of March, 1785, Rufus King, a member from Massachusetts, moved the following :

"There shall be neither slavery nor involuntary servitude in any of the States described in the resolve of Congress of the 23d of April, 1784, otherwise than in the punishment of crimes, whereof the party shall have been personally guilty ; and that this regulation shall be an article of compact, and remain a fundamental principle of the Constitutions between the thirteen original States and each of the States described in the said resolve of the 23d of April, 1784."

On the motion to commit the foregoing proposition or article eight States voted in the affirmative : New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania and Maryland ; three in the negative : Virginia, North Carolina, and South Carolina. Neither Delaware nor Georgia was represented in the vote. The subject

does not appear to have been acted on, under the form of Mr. King's motion.

Various movements and efforts were made to establish fundamental provisions for the government of the North Western Territory, but nothing could be definitively settled. This question of slavery was the insurmountable obstacle in the way of any satisfactory arrangement. In maturing an Ordinance, for the regulation of the Territories, it was found necessary to pass over the subject of slavery, and confine attention to other points. Committees were raised for this purpose, from time to time, and a gradual progress made.

On the 9th of July, 1787, the Ordinance was again referred to a committee. Mr. Carrington, of Virginia, was chairman, and Messrs. Dane, of Massachusetts, R. H. Lee, of Virginia, Kean, of South Carolina, and Smith, of New York, were the other members. On the 11th of July, two days after the subject was referred to them, this committee reported the Ordinance, which is and ever will be the fundamental law, the Magna Charta, of the North Western States. It is one of the noblest documents of the kind ever devised and constructed by man. But as reported, on the 11th of July, it did not contain a syllable on the subject of slavery. It had its second reading, the next day, on the 12th of July.

On that day Mr. Dane, of Massachusetts, took upon himself, and upon Massachusetts, a solemn and most momentous responsibility. He and many other enlightened and philanthropic men, in all parts of the country, at the South as well as at the North, felt the unspeakable importance of rescuing the North Western Territory from slavery. The members from the free States were immovably resolved never to consent to the extension of slavery; but the slave-holding States, then as now, persisted in claiming a right to carry their slaves into it, to hold them there as slaves, and plant the institution of slavery among the primary elements of its settlement. Mr. Dane knew that the non-extension of slavery could not be secured without a price, and he determined to offer one. He rose and

stated that, in the committee, as ever before, since the day when Jefferson first introduced the proposal to prohibit slavery in the territories, it was found impossible to come to any arrangement; that the committee desired to report only so far as they were unanimous; that they, therefore, had omitted altogether the subject of slavery, but that it was understood that any member of the committee might, consistently with his having concurred in the report, move in the House to amend it, in the particular of slavery. He therefore moved, as an amendment, the proposition of Thomas Jefferson, as it had been modified by Rufus King; and by way of compromise, as an inducement or consideration to the South, in virtue of which they might be willing to relinquish their right to carry their slaves into the territories of the Union, he proposed to add a proviso, so that the whole section would read thus:

"Article the Sixth — There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in punishment of crimes whereof the party shall have been duly convicted: Provided always, that any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid."

The article, thus framed, interdicting slavery, but as the price paid for the boon, placing the North Western States under the odious obligation, afterwards fastened upon all the other free States, passed unanimously, and instanter, every State and every member voting for it.

This was the great compromise upon which all the proceedings, that resulted in the formation of the present constitution of the United States, were based. The slave States relinquished their right to carry slavery into the territory that was the common property of the Union, and the free States consented to allow the restoration of fugitive slaves. This was the bargain then and there consummated.

I maintain, Mr. Speaker, that the slave States, at this day, can make no claim to plant Slavery in California or New Mexico, so strong as Virginia then made to cross the river Ohio with her slaves. The territory then in question was separated from her

only by the breadth of that river. She not only had a common, joint and equal right in it with all the other States, but it was originally her own, and had just before been presented by her, as a free gift, to the Union. She might well have raised an outcry against being driven away from an equal participation with the other States, in settling the region that was once all her own, and had just been given by her to the Union. She might well have claimed a right to cross over from one bank of her own river to the other. But she waived all such claims, and, in consideration of the protection guaranteed to her by Mr. Dane's proviso, she relinquished all claim to extend the institution of slavery beyond the limits of the territory that remained to her.

It must be borne in mind that the territory which the South thus unanimously relinquished to freedom, was all that the Union then possessed; all that it ever, in those days, dreamed of possessing; and all that it was consistent with the principles of the Union for it to possess; and further, it was much more available, accessible, and desirable, as a resort for emigration, by the slave planters, than New Mexico or California. Still they gave it all up, and felt that they were compensated for what they had relinquished, by the proviso Mr. Dane offered.

Now, Mr. Speaker, I ask the House, and I ask the country, to look at the real sense and import of this great transaction, consummated in the Ordinance of 1787. The question then was precisely the question that now divides this country — by far the most important that ever has been, or ever can be agitated in this or any country. It was felt to be so then. It is justly felt to be so now.

Then, as now, a vast territorial domain had just become the common property of the Union.

The slave States, then as now, claimed a right to go into that territory and establish their institution there, and claimed it on the same ground, then as now.

The free States, then as now, felt bound in conscience and in humanity, to insist that the blight and curse of slavery should

never be permitted to extend over territory of which they were joint proprietors.

In other words, the two sections of the Union were then arrayed against each other, on the very same question, that now divides them.

The free States demanded the non-extension of slavery, and an assurance to that effect; and they fairly and fully purchased such an assurance, by paying the price, offered by Nathan Dane, and accepted by the South. And the result, then reached, can only be interpreted, as a pledge by the slave States, that, if the protection to their property, guaranteed in the proviso of the Ordinance of 1787, were secured, they would relinquish forever all attempts to extend the area of slavery. The slave States then agreed to do precisely what we now call upon them to do. We ask no new concession — we only demand adherence to an old compact.

The free States would not enter into any arrangement, except upon the basis of the non-extension of slavery; and the slave States would not agree to that, unless for a consideration, which they received, and are receiving.

It must be remembered that all we are bound to do, is to suffer fugitive slaves to be reclaimed. We are not required to act, or co-operate at all in the matter, but simply to permit it to be done. The South Carolina members, at that time, tried to impose a more active obligation on the free States, but the proposal was indignantly rejected by the New England and the Middle States. (Madison papers, vol. 3, p. 1417.) As it is, the obligation is felt to be an odious one. It is painful and humiliating to feel that we cannot say of these free republican States what is the just boast of English Liberty — that whoever treads our soil, the chains fall from his limbs — and that whoever breathes our atmosphere, is evermore a freeman. It is indeed painful and humiliating to witness, without being able to prevent, a violation of the sacred form of Liberty, to stand with our arms folded, while slavery seizes and snatches back its victim. But so vast, incalculable, and infinite was the blessing se-

cured, by the assurance of the non-extension of slavery, that it authorised much concession and sacrifice. The obligation, under which we were then brought, was suggested and assumed at the instance, and under the lead of Massachusetts.

In the old Congress, they voted altogether by States — each State was required to have at least two, and not more than seven delegates — Massachusetts was represented by but two delegates. They belonged to the immediate vicinity of my own constituency — Nathan Dane of Beverly, and Samuel Holten of Danvers. Mr. Dane moved the amendment which binds the free States to suffer the arrest of fugitive slaves, on soil in all other respects consecrated to liberty, and both of them voted for it. They trusted to the honor and truth of the South. Neither they nor the State they represented would have taken the responsibility of fastening such an obligation on the free States, had they not believed that by so doing they had stayed forever the diffusion of slavery.

From the moment that the Southern States began to develope the policy of extending slavery by the annexation of Texas, I have felt that it was a fraud upon Massachusetts, and upon the memory of her representatives, and that a voice of indignant remonstrance ought to be heard, proceeding from the graves of Dane and of Holten.

I proceed with my argument. The old Congress was in session, at Philadelphia, when the Ordinance was passed. At the same time, the convention for framing the constitution of the United States, George Washington in its chair, was also in session in that city. Some gentlemen were members of both bodies. There was, as was natural, much intercommunication between them. The same difficulty arising from the question of slavery, which, as I have shown, had for years paralyzed the proceedings of the Congress, was an insurmountable obstacle in the way of the convention. The members from the free States were more keenly alive to the importance of the question, than is imagined by those who have not studied their language and actions. They were unpleasantly committed, as I

have mentioned, by the three-fifths ratio. As they had insisted upon it for taxation, it was rather hard for them not to allow it for representation. But so great was their abhorence of slavery, that, had not the Ordinance of 1787 assured them that a limit was fixed for it, which it could never pass, they would not have agreed to insert the three-fifths ratio in the constitution. But, so soon as it was found that the Northwest was secured to freedom, and that the slave States had agreed to give up the right to extend slavery, the convention went on harmoniously and rapidly to mature its work.

It is curious to observe how precisely the relative positions of Massachusetts and South Carolina, on the subject of slavery, were the same then as now. In the old Congress, when, on the 1st of April 1783, it was agreed to count only three-fifths of the slaves, as a basis for taxation, Massachusetts could not be brought to sanction the arrangement. Her delegation was divided — Messrs. Osgood and Gorham voting aye, and Messrs. Holten and Higginson voting no. Rhode Island also voted no, and one of the four members of Virginia. Georgia was not present. All the other States and delegates voted aye. (Journals of Congress, vol. 8, p. 170.) In the convention that framed the constitution, on the 11th of July, 1787, Mr. Butler, of South Carolina, moved that the blacks should *all* be counted, in fixing the basis of representation. There were three votes in the affirmative — Delaware, South Carolina and Georgia; and seven in the negative — Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia and North Carolina. The next day, Mr. Pinckney, of South Carolina, renewed the motion. Delaware changed her vote, making it 2 to 8. On the same day, the three-fifths ratio was finally adopted — 6 in the affirmative, Connecticut, Pennsylvania, Maryland, Virginia, North Carolina and Georgia — 2 in the negative, New Jersey, and Delaware. Massachusetts and South Carolina were divided. Half the delegation in each persisted in adhering to the opposite extremes, on which, from that day to this, they have stood in direct and absolute antagonism to each other.

Georgia and part of South Carolina changed their votes, during that day, (July 12th, 1787,) owing, no doubt, to the adjustment of the slave question, then effected by Mr. Dane, in the simultaneous session of the old Congress.

By the Ordinance, it was provided that fugitive slaves might be reclaimed within the States to be erected in the Northwest Territory. By the Constitution, however, the obligation of allowing them to be reclaimed was imposed upon all the States. This proves that the prohibition of slavery, beyond its then limits, was felt to be universal.

The argument is this: The non-extension of slavery, into territory Northwest of the Ohio, had before been unalterably secured by the Ordinance of 1787. But the obligation which, by the Ordinance, attached only to a few States not then in existence, which in some future day might arise in that distant corner of the Union, and in consideration of which slavery had been excluded from them, was by the Constitution imposed upon all the old free States. Why was this? For what consideration did they thus incur the obligation? It could not have been for the sake of the exclusion of slavery over the Northwest only, for that was already made sure by compact in the Ordinance of 1787. It was in consideration of a GREAT PRINCIPLE established — and that principle was, that a line was drawn, never to be obliterated, beyond which slavery should not pass. Such a principle was appreciated by the free States as worth paying for; and for this they were willing to incur the obligations which now bind us. But if the slave States are permitted to extend slavery any where else on the continent, except in the Northwest Territory, nothing was gained by the old free States in coming under the obligations, before imposed by the Ordinance upon States to be erected in the Northwest Territory. What comfort, satisfaction or benefit could it have afforded Massachusetts, for instance, to have slavery interdicted from crossing the Ohio, but permitted to flow, without let or hindrance, in all other directions, over the length and breadth of North America? There is no other ex-

planation of which these transactions are susceptible. The Ordinance of 1787, viewed in connection with the Constitution, contains, as its substance, these two ideas — a limit forever put to slavery, on one side, and protection for it, in a certain shape, where it then existed, and so long as it should exist, on the other side. It means this, and it can mean nothing less.

As the non-extension of slavery had been secured—as it was prohibited, by a fundamental and immovable compact, from ever occupying a single foot of ground in the territories belonging to the Union, which were all that, it was then supposed, ever could belong to the Union — as it was finally disposed of, consummated and placed beyond contingency, among the settled and irreversible things of the past, there was no occasion to speak of it in the Constitution. The acquisition of any more territory than that to which the Ordinance applied, was not among possibilities in the purview of the Constitution. That of Louisiana, in the opinion of Mr. Jefferson himself, was unconstitutional, and, of course, all subsequent acquisitions are equally so. But the other part of the bargain, that which binds us, namely, allowing the reclamation of fugitive slaves, was very properly, from the nature of the case, inserted into the Constitution. It was an obligation, not consummated, and of which the execution was to run on, in all probability, into a remote and indefinite future.

But I proceed to other proof; and the only difficulty I have is, to reduce my materials within my limits. Commenting, in the introduction of my argument, upon Mr. Calhoun's definition of the compromises of the Constitution, in his recent address to the Southern people, I stated that, reduced to their proper elements, they embraced these two items only — the provision in reference to fugitive slaves, and the grant to Congress of the power to prohibit the importation of slaves after 1808, and in the mean time to levy a tax of ten dollars a head upon them. Now as matters have turned out this is a queer kind of compromise. Instead of a mutual concession, it has proved a couple of concessions, both on one side. But it was meant

right at the time. All parties then felt that the power to prohibit or restrain the foreign slave trade was a sacrifice made by the South and a point gained by the North. And it is a fact well worthy of reflection — the thoughtful student, and the considerate philanthropist, may well ponder upon it, and draw from it a lesson of humility, caution, and self-distrust—that, what was believed to be a great security and attainment for freedom, has turned out to have operated precisely to the opposite effect. The interdiction of the foreign slave trade has, from the beginning, been not merely a protective, but a prohibitory, tariff in favor of Southern slavery. It has secured the entire home market to the domestic slave-breeder. It has quadrupled the value of slave property, and has kept alive the institution in half the slave States of the Union.

But, at the time, it was supposed that it would, by cutting off the foreign supply, dry up and exhaust slavery at its fountain, and that its final effect would be the abolition of that species of property throughout the Union.

In my first resolution, it is stated that it was "well understood that the gradual and final removal of slavery, was an object contemplated with faith and hope by the patriotism and philanthropy of the South as well as of the North." Of this proposition, the proof is most abundant. Whoever reads the documentary and political history of that period, will find evidence scattered all along its pages, not only that the people of the free States were as deeply interested as they now are—I believe I may say, more universally interested—in the abolition of slavery, but that the Southern people also entertained the same feeling to a great extent. Slavery was every where felt to be a bitter reproach and a burning disgrace to the land. It was thought to be a great point gained to this end, to clothe Congress with the power to probibit the foreign slave trade. The article conveying the power was resisted by the pro-slavery interest in the South, on this ground, and relied upon to reconcile the North to the adoption of the Constitution. It was every where regarded as providing the means, and placing in the

hands of Congress the power, to secure the final removal of slavery. As illustrations and proofs of this fact, I will first refer to the debates in two of the State Conventions, assembled to act and decide upon the acceptance of the Constitution of the United States. I will cite from one State South and one North, of Mason and Dixon's line. In the North Carolina convention, the Constitution was opposed because the clause under consideration was regarded as aiming at the extinguishment of slavery; and how was the objection met by the friends of the Constitution? Why, it was met by a frank and honorable admission that it would, perhaps, and probably, thus operate. Mr. Iredell — a name ever honored in that State — expressed himself in the following noble language:

"When the entire abolition of slavery takes place, it will be an event which must be pleasing to every generous mind, and every friend of human nature."—Elliott's Debates, vol. 3, pp. 97, 182, 277.

In the Pennsylvania convention, Mr. Wilson, a gentleman who had taken a leading and honorable part in the convention that framed the Constitution, said:

"I consider this" (that is, the clause giving Congress the power to abolish the slave importation) "as laying the foundation for banishing slavery out of this land. The new States that are to be formed will be under the control of Congress in this particular, and slaves will never be introduced among them."—Elliott, vol. 3, p. 250.

In the first Congress, on the 13th of May, 1789, Mr. Parker, a member from Virginia, moved, under authority of the clause of the Constitution I am now considering, to impose a duty of ten dollars a head on imported slaves. He spoke of the importation as "contrary to the revolution principles," and of slavery itself he used the following language:

"He hoped Congress would do all in their power to restore to human nature its inherent privileges, and, if possible, wipe off the stigma which America labored under. The inconsistency in our principles, with which we are justly charged, should be done away; that we may show by our actions the pure beneficence of the doctrine we held out to the world in our Declaration of Independence."

The name of the author of these sentiments, Josiah Parker, of Virginia, ought to be held in everlasting remembrance.

They were, we have a right to presume, the sentiments of his constituents, for he was afterwards five times re-elected by them to Congress.

Col. Bland, of Virginia, a man spoken of by Washington, in a letter to Dr. Belknap, (Sparks's Washington, vol. 11, p. 240) in terms of marked respect, uses language, which proves that he was worthy of commendation, and which fully justifies all that my Resolutions affirm :

"He wished slaves had never been introduced into America; but if it was impossible, at this time, to cure the evil, he was very willing to join in any measures that would prevent its extending farther."

Mr. Madison also advocated the motion with great earnestness, and with that philosophical wisdom and reach of mind in which few, if any, have equalled him. He spoke of "the imbecility ever attendant on a country filled with slaves." Again, he says of States in which slavery exists, "every addition they receive to their number of slaves, tends to weaken them and render them less capable of self-defence." On this ground, he argues that slavery is a national concern, and that its increase ought to be guarded against "by those charged with the general administration of the government." Elliott, vol. 1, p. 305—311.

In another debate in the same Congress, in March, 1790, on committing a memorial from the Quakers, or Friends, as we now rejoice to call them, Mr. Madison advocated the same views.

"He entered into a critical review of the circumstances respecting the adoption of the Constitution, the ideas upon the limitation of the power of Congress to interfere in the regulation of commerce in slaves, and showing that they were not precluded from interposing in their importation, and generally to regulate the mode in which every species of business shall be transacted. He adverted to the Western Country, and the cession of Georgia, in which Congress have certainly the power to regulate slavery; which shows that gentlemen are mistaken in supposing that Congress cannot constitutionally interfere in the business, in any degree whatever."—Elliott, vol. 4, p. 213.

These two last citations, in themselves, alone, fully sustain all that the Resolutions, before the House, assert or imply. If any man ever understood the Constitution of the United States,

it was James Madison. That he contemplated the abolition of slavery in this country, with satisfaction and hope, is evident, from the fact, that he argued in favor of the exercise of a power to that effect, affirmed by him to be granted to Congress by the Constitution.

That the view I have given of the design of the article in the Constitution, in reference to the prohibition of the foreign slave trade, is correct, can be proved beyond all controversy. Since the House adjourned yesterday, I have received a note from a friend, which I will read to the House. The writer is a scholar, of unsurpassed attainments in classical erudition and literature, and of great knowledge of constitutional and legal history; more than twenty years ago, although not yet an old man, he bore a conspicuous part in the deliberations of both branches of this legislature—he has always been deeply interested in the cause of liberty, and his sympathies have been with every movement looking towards the abolition of slavery—I mean the Hon. John Glen King, of Salem. His note is as follows:—

Salem, Feb. 19.

Dear Sir:—I have heard many persons doubt whether you will be able to shew that the slaveholders as well as the philanthropists understood—i. e. virtually agreed, that there should be no further extension of Slavery, at the time the pro-slavery provisions contained in the Constitution were consented to.

I have, for many years, entertained a belief on the subject, substantially the same, with the doctrine of your resolutions, but I am unable to say where I obtained it, and therefore cannot refer to any historical evidence. My views are shortly these, as I have frequently stated to my friends, and perhaps I may have expressed them to you.

About the time of the establishment of the Constitution, and years before, and after, it was the general belief of all persons who took any interest in the subject of slavery that if the slave-*trade* were abolished, slavery would thereupon dwindle, languish, and in a few years die out. This was the firm belief of Clarkson, Wilberforce, and others in England, and of Dr. Franklin, Rush, Rittenhouse, Jay, Roger Sherman, and others, (who were then called philanthropists) in America. The slaveholders and all interested in slave property, believed it as well. Hence the desperate efforts made by their influence in and out of Parliament to prevent the abolition of the slave trade. The trade itself they cared but little about, except for its effect upon "*the institution*." This, then, was the all but universal belief as to the operation of the abolition of the slave trade upon the *life* of slavery. But for *one man* (as I have read somewhere) the "all but" might have been omitted in the above sentence. This remarkable exception was the sagacious and almost infallible Edmund Burke. He was applied to as one of the friends of the cause of abolition, by Mr. Wilberforce and Mr. Clarkson, to prepare what was called "A Negro Code," for Jamaica. And in conversation with them he expressed to them the novel belief that the abolition of the slave trade would not effect the destruction of slavery. "Destroy *slavery*," said he, "either by immediate abolition, or by some early limitation of its days, and the slave trade will languish and soon die.

Not such will be the effect upon slavery of the stopping of the slave trade. This latter will inevitably follow the law of all mercantile transactions — where there is a *demand* there *will* be a *supply*. Slaves will come somehow, will be produced by some means, in spite of all your laws, while there is such a class as slaveholders to buy them."

But Mr. Burke was not believed in this as in many other matters when he was wiser than his generation, and the belief remained with all in England, France, and this country, as I fully believe, that to limit the slave trade to any particular date, was to determine the death hour of slavery itself.

Now, I have always taken it for granted, that, under the influence of this persuasion, the compromises of the Constitution were made. Both parties not only believed, but intended, and so virtually agreed with each other, that soon after 1808, *slavery itself* was to cease from the land. These men never dreamed of Texas, Florida, or even Louisiana, as thereafter to make a part of the Union; and many of the Southern patriots, as is well known, were sick enough of slavery, limited even, as it then was. Theoretical and practical freedom and equality were dearer *then* to the whole country, than they are now that we have been spoiled by prosperity in our right and wrong enterprises. I fully believe that the great men who represented the Northern interest at the time, would never have consented to an unlimited continuance of slavery. There must have been a reasonable termination of it in their view and admitted by the other side, and well understood by all, or they never would have become parties to such a compromise. The view, then, which you take in your resolutions, seems to me nearly inevitable. With this plain understanding of the necessary effect of the abolition of the slave trade in 1808, both parties contracted. They must be supposed to have *intended* what they clearly understood. And so, in all reasonings and inferences from the contract they then made, the *intention* of both parties may be considered as the essence of it, as what they and their successors are bound to observe and keep.

As I have scarcely ever heard any one express any approach to my views upon this subject, until I saw your resolutions, I have thought you would excuse and perhaps be pleased with this communication from

Yours, very truly, &c.

J. G. KING.

The interesting statements of my learned correspondent, are incontrovertible, and while I felt sure of my ground, from previous examination, and am ready to maintain it, I cannot but feel doubly reinforced by confirmation proceeding from such high authority.

That THOMAS JEFFERSON was deeply interested in the NON-EXTENSION, and in the ABOLITION of slavery, all know, and none dispute. [Jefferson's writings — vol. 1, p. 268 — Letter to Dr. Price.] Whoever reads carefully the debates and deliberations of that day, cannot doubt that the same objects were, then, dear to the heart of JAMES MADISON. The immortal memory of these great statesmen, and pure patriots is, itself, a withering rebuke of the Virginia politicians, who, in our day, with a stupid and suicidal perverseness, hug the saw that is tearing their vitals.

That Mr. Madison was wise in regarding slavery as reducing a country to imbecility, and therefore an evil which ought not to be extended, but on the contrary, requiring to be checked and reduced, what a melancholy proof does the subsequent history of Virginia afford! With a territory of unequalled extent, among the Atlantic States, of unrivalled climate, and natural advantages, and a glorious lustre reflected along her annals by names that can never die, and one of which outshines all other names in history, she is sinking lower and lower, dragged down by the dead weight of slavery. Under the census of 1820, the ratio of Congressional representation was 40,000 — New York had 34 members; Virginia had 21 members. Under the present census, the ratio is 70,680 — New York holds its own — 34. Virginia has gone down to 15 — one third of her political power annihilated in 20 years!

In 1790, Massachusetts and Maine were one State. Their aggregate area was 42,250 square miles. The area of Virginia is 61,352 square miles. In 1790, Virginia had 454,881 white inhabitants, Massachusetts and Maine had 475,257.

In 1840, Virginia had 740,972 white inhabitants, Massachusetts and Maine had 1,242,376!! When the difference in area, in soil, in climate, and in geographical position, is considered, these figures tell the whole story.

Without going into more extended detail, or citing, as I might, numerous additional passages, to sustain the doctrine of my Resolutions, I will bring the statement to a close, by endorsing the assertion [see Theodore Parker's letter on Slavery] that, so strong was the conviction at that time, all over the Confederacy, that slavery was an evil, which ought not to be extended, but restricted, and if possible, removed, had it not been for the influence of South Carolina, the abolition of slavery would have been expressly, although prospectively, provided for, in the Constitution of the United States! South Carolina stood then, just where she stands now. I trust, sir, that the unanimous adoption of the Resolutions before you, will show that Massachusetts, too, stands now where she stood then.

One of the Delegates from South Carolina, Gen. Pinkney, in a debate, in the House of Representatives of that State, on the Constitution framed for the United States, gives the following account of the views and the course of himself and colleagues in the Convention; from which, I am confident, every discriminating interpreter will gather confirmation of the propositions I have maintained.

In answer to Mr. Lowndes, he said:

"We were at a loss for some time for a rule to ascertain the proportionate wealth of the States; at last we thought that the productive labor of the inhabitants was the best rule for ascertaining their wealth; in conformity to this rule, joined to a spirit of concession, we determined that representatives should be apportioned among the several States, by adding to the whole number of free persons three fifths of the slaves. We thus obtained a representation for our property, and I confess I did not expect that we should have been told on our return, that we had conceded too much to the Eastern States, when they allowed us a representation for a species of property which they have not among them." The General then said "he would make a few observations on the objections which the gentleman had thrown out on the restrictions that might be laid on the African trade after the year 1808. On this point your delegates had to contend with the religious and political prejudices of the Eastern and Middle States, and with the interested and inconsistent opinion of Virginia, who was warmly opposed to our importing more slaves. I am of the same opinion now as I was two years ago, when I used the expressions the gentleman has quoted, that while there remained one acre of swamp-land uncleared of South Carolina, I would raise my voice against restricting the importation of negroes. I am as thoroughly convinced as that gentleman is, that the nature of our climate, and the flat, swampy situation of our country, obliges us to cultivate our land with negroes, and that without them South Carolina would soon be a desert waste. You have so frequently heard my sentiments on this subject that I need not repeat them. It was alleged by some of the members who opposed an unlimited importation, that slaves increased the weakness of any State who admitted them; that they were a dangerous species of property which an invading enemy could easily turn against ourselves and the neighboring States, and that as we were allowed a representation for them in the House of Representatives, our influence in government would be increased in proportion as we were less able to defend ourselves. "Show some period," said the members from the Eastern States, "when it may be in our power to put a stop, if we please, to the importation of this weakness, and we will endeavour for your convenience, to restrain the religious and political prejudices of our people on this subject." The Middle States and Virginia made us no such proposition; they were for an immediate and total prohibition. We endeavoured to obviate the objections that were made, in the best manner we could, and assigned reasons for our insisting upon the importation, which there is no occasion to repeat, as they must occur to every gentleman in the House. A committee of the States was appointed in order to accommodate this matter, and after a great deal of difficulty, it was settled on the footing recited in the Constitution.

By this settlement we have secured an unlimited importation of negroes for twenty years; nor is it declared that the importation shall be then stopped; it may be continued. We have a security that the General Government can never emancipate them, for no such authority is granted, and it is admitted on all hands that the General Government has no powers but what are expressly granted by the Constitution, and that all rights not expressed were reserved by the several States. We have obtained a right to recover our slaves in whatever part of America they may take refuge, which is a right we had not before. In short, considering all circumstances, we

have made the best terms for the security of this species of property it was in our power to make. We would have made better if we could, but on the whole I do not think them bad."

Is it not evident, from the foregoing language, that the clause of the Constitution, allowing Congress to prohibit the importation of slaves after 1808, was regarded by General Pinckney, and by those whom he addressed, as designed and adapted to put limits to the extension of slavery? Is it not evident that in his mind slavery was not dreamed of as going beyond what then remained of "unclaimed swamp land" in South Carolina? Is it not evident that, so far from contemplating such a policy, as the statesmen of South Carolina of the present day persist in, of extending the baneful institution over the length and breadth of North America, General Pinckney and his contemporaries, even in South Carolina, only attempted to justify it, in "the flat, swampy situation" of the low lands of that State? He cites the same arguments used by Mr. Madison in reference to the weakness which slavery brings upon a State, and he proves that it was the understanding between the Eastern and the Southern States, that the power to prohibit the importation of slaves, would put a stop to the spread of that "weakness." The whole tone and tenor of his remarks demonstrate that it was universally regarded that, in consideration of the right conceded to them, and never possessed before, of recovering their fugitive slaves, the South had on their part, made a great concession; and I challenge any man to say what that concession was, — what the South gave up, — if not the ability to replenish and perpetuate the slave institution, from what was then believed to be the necessary and the only source of its supply—the importation of Africans. If, then, it was understood at the time, by the South, even by South Carolina, that, in obtaining from the "religious and political prejudices of the Eastern and Middle States," a right they had never possessed before, they had acceded to an arrangement the declared object and design of which was, not only to put limits to, but ultimately to exhaust and remove, the slave

institution, what can be imagined more absurd or outrageous than for them to charge us with violating the compromises of the Constitution because we are determined that slavery shall never be extended any more over this continent?

I indulge the hope, Mr. Speaker, that in the judgment of the House, I have proved the following propositions.

1st — That the southern States, at the time of the formation of the Constitution, relinquished all claim to extend the slave institution into what were then the only territorial possessions of the Union — a claim which was stronger than any they can now put forth, to extend it into New Mexico and California.

2d — That this relinquishment on their part could not then have been regarded in any other light than as an acknowledgment of, and acquiescence in, the principle and the policy of the non-extension of slavery.

3d — That it was then declared to be the judgment of the leading men, and of the politicians generally, of the South, that slavery was an evil and a wrong.

4th — That it was understood by both the North and the South, not only that slavery was never to be extended, but that by authorizing Congress to forbid the importation, a power was provided by which, in the course of time, its supply being cut off, it would gradually disappear from the States within whose limits it then existed — and

5th — That the free States consented to allow the three-fifths ratio to be transferred from the confederation to the Constitution, and under the lead of Massachusetts, also consented to submit to the reclamation of fugitive slaves, within their borders, upon the strength of the assurance that such, as I have stated, were the sentiments, and such the engagements of the slave States.

If the Southern States, by endeavoring to spread the area of slavery, and to perpetuate its existence, have broken their part of the engagement, it is clearly our right and our duty, not only to render them as little aid, as possible, in such a fatal and

abominable policy, but to resist and defeat it with our united strength and utmost efforts.

That the people of Massachusetts, of all parties, and without exception, are determined to do what they can to prevent the institution from extending its blight over the vast regions of New Mexico and California, there cannot be a shadow of doubt. They all know that no combination or accumulation of woes and miseries can be imagined greater for a country, than to have gold beneath, and slavery above, its surface.

If slavery is permitted to take root, beyond its present limits, and to cast its desolating shadow wider and wider over this continent, then will the last refuge of liberty and humanity be closed; and hope — not for a season, but for ages — so far as we can see, forever — may bid the world farewell.

If, at this juncture, the voice of Massachusetts shall be heard, rising in all her venerable authority, through the unanimous utterances of her representatives, in both branches of the Legislature, and recalling the Southern States to the solemn pledges upon which the Union was formed, it will be respected, it may be obeyed.

Let me then urge and implore all, of every party, in this House, to unite in the support of the Resolutions before us.

To my respected associates, belonging to what is called the Democratic party, I would say — prove that you are worthy to be called by that name. It is your proud and glorious boast to belong to the great party of progress. Every where else, the world over, the triumphs of that party are recorded in the emancipation of the slave, and in lifting up the oppressed. The Democratic party, in these free States, ought to occupy, and I rejoice to behold evidences thickening all around, that they feel that they ought to occupy the front rank in the present contest for the liberty of this continent.

The gentlemen who represent what is called the Free Soil party on this floor, will, of course, gladly co-operate in clothing the voice of Massachusetts with might, as she forbids and de-

nounces the extension of slavery. The courtesy, consideration, and truly patriotic liberality, and moderation of spirit they have exhibited uniformly, in the present session, as well as the profound interest they feel in the great object of their exclusive devotion, assure me that they will rejoice to unite, with one voice and one heart, in pledging Massachusetts to the freedom of America.

To my own political friends I will speak with boldness, Whigs of Massachusetts, in sharing with you, the labors of the recent political canvass, I felt from the beginning to the end, that the success of our candidate was identical with the rescue of our boundless territory from the curse of slavery. I thought so then. I think so now. I believe, — a few days perhaps will show how justly, — that the man who, in obedience to our triumphant call, is now approaching the seat of government, will promptly, if opportunity be offered him, sign his honored name to a bill containing the Jefferson proviso. I assured the people that I supported him, on this belief, and that if he were elected, his friends in Massachusetts would do their utmost to bring the power of his Administration to bear in favor of the great interests of freedom and philanthropy. That pledge, so far as I am concerned, is now redeemed.

In taking my seat, Mr. Speaker, I would observe that, in constructing the last Resolution, I have copied the ancient phraseology. As the sentiments are such as Massachusetts cherished and maintained in the olden time, it is fitting that they should be conveyed in the form of words used in the revolutionary age, and coming down to us from that primitive period, when the whole body of the freemen assembled in what was then called "a Great and General Court." It is true that we are not the whole body of the people, but, Sir, if the whole people of Massachusetts were assembled here, and the question were put to them, they would respond to these Resolutions with prompt and earnest unanimity, and with an "aye," that would reach the Capitol at Washington and reverberate in tones of thunder through the land.

APPENDIX.

It will be perceived that the Resolves of the Judiciary Committee of the House declare that it is the duty of Congress to insist upon the establishment of "the principle of the Ordidance of 1787 upon the subject of slavery," over new Mexico, California, and all "territories of the Union," and argue that legislation to this effect, by Congress, would not violate, BUT PRESERVE, the compromises between the North and South that secured the adoption of the Constitution." The only difference between their Resolves, and those offered by Mr. Upham, was that the latter stated distinctly and expressly the same doctrine which the former conveyed by necessary implication and construction. The Judiciary Committee and others particularly interested in their Resolves, adhered to them with great pertinacity. Several of the leading men of the Free Soil and Democratic party either contended for certain favorite Resolves of their own, or were unwilling to entertain any amendments but such as they might suggest. In the course of the discussion it became evident that many influences were in operation unfavorable to a discriminating and just decision in reference to the various sets of Resolutions before the House. So unprepared were the House to meet the subject on its historical merits, that a leading member maintained the assertion that the slavery question did not attract prominent attention at the time when the Constitution was formed! It was also maintained that at the date of the Ordinance of 1787 the United States owned as much territory south of the Ohio as North

of it, and that while the latter was consecrated to freedom, the former was designed to be desecrated to slavery ! ! ! Some gentlemen went so far as to speak of it, as doubtful, whether the Constitution was founded upon any compromises whatever ! It was quite evident, in consequence of the historical heresies that had mingled in the debate, and the constitutional bugbears that had been "scared up" from the word "compact,', that unanimity could not be obtained unless some one would set an example of concession ; and as the doctrine of his Resolves was conveyed, although not so explicitly and unequivocally as he desired, by the Resolves of the House Judiciary Committee, Mr. Upham felt it to be his duty to withdraw his amendment, which he did, as follows :

Mr. Speaker,—I wish, at this stage of the discussion, to occupy for a few moments, the attention of the House. In amending my resolutions, yesterday, I relieved them of the word "compact," which had created such, to me, most surprising alarm in the breast of the learned gentleman from Boston, (Mr. Curtis.) I did this not because I agree at all with that gentleman in his objection to the word. Whether in other respects the Constitution of the United States is a compact I do not mean to start an enquiry. But on the subject of slavery it rests on a "compact," and that compact is, as it were, drawn up into its very substance. I presume that nothing, of human arrangement, can be more immovable and unalterable than the Ordinance of 1787. It underlies the Constitution, and cannot be separated from it — the States were incapable of forming a Constitution that should not sanction, uphold and perpetuate it. Nothing could get over it, nothing ever can get under it. The Ordinance is on its very face, and in its express terms, a "compact." Sir, the Constitution of Massachusetts is a "compact," and so declared, in its preamble. It is not from any opinion of my own, but to prevent occasion for dispute on an extraneous topic, and to disperse the apprehensions of the gentleman, who saw poison lurking in the word, and cried out "latet anguis in herba," that I struck it out.

But, Mr. Speaker, I do not design to mingle any further in this debate. By no agency of mine shall the voice of Massachusetts, pleading in behalf of the oppressed, and forbidding the extension of slavery, be deprived of the moral power that unanimity may impart to its tones.

The gentleman from Northampton, (Mr. Hopkins,) fears to assert the principle of historical truth on which my resolutions rest. The gentleman from Worcester, (Mr. Bacon,) also has objections and doubts. The gentleman from Groton, (Mr. Boutwell,) controverts the historical statements by which I have sustained them. An influential press in this city, which is supposed to reflect the sentiments of a leading member of this House, (Col. Schouler,) has expressed dissent from some of my conclusions. Several gentlemen have manifested a novel, unprecedented, and strange distrust in historical evidence generally. Many others find that more time is needed, than can now be afforded, to enable what they call the new truths I have presented, to be adjusted into their proper position in their minds.

I should have been pleased, not of course on my own account, for in spreading my views before the House and the people, I have done all that concerns me personally, but on account of what I believe to be the vital interest of the cause, had gentlemen all felt with me that it was for Massachusetts now to hold the South to her proved engagements. When she takes the ground upon which I have faithfully endeavored to place her, and says to the South and to the World, I only consented to give to slavery the temporary countenance, afforded by the Constitution, because I was assured that it could not be extended, but would be permitted to die out and disappear from the land — when Massachusetts takes this ground, her ancient honor will be redeemed, and her incumbent duty discharged. There are wise and good men in the South, who would be glad to avail themselves of the doctrine of my Resolutions, should they be expressed by the high authority of this Commonwealth. If they could take the ground that the plighted

faith of the South engaged her to withhold her hand from spreading slavery, they might appeal with success to the pride and self-respect and sense of honor of her people, and the triumph of our cause would thus be secured. I believe that the party in the South, whose sympathies are allied to those of the majority on this floor, would be able to pass through the impending crisis, and bear themselves up in sustaining the incoming national Administration, in the establishment of territorial governments on the principles of freedom, (the only ones, I trust, that can ever be established,) much more effectually and auspiciously, were we to put the question on the ground I have indicated, rather than on any other. But I feel that my whole duty to our friends in the South, to my own party, to all other parties, and to our venerable Commonwealth, has been discharged, and rather than have any considerable portion of her representatives record their votes against an historical proposition essential to her honor and glory, in the past and in the future, I will now do what I can by withdrawing my Resolutions, to bring to a close a discussion which consumes the public time, and is bringing us into false positions."

The result was that the other Resolves were rejected without a count, and the House adopted the Resolves of its Judiciary Committee, the vote being by yeas and nays, and one solitary voice only being raised in the negative.

In an eloquent speech, in the course of the debate, Mr. Banks of Waltham maintained with great ability that the Ordinance was a "compact," and, as such, was renewed and perpetuated by the first paragraph of the sixth article of the Constitution of the United States, which declares that "all engagements entered into, before the adoption of this Constitution, shall be as valid against the United States, under this Constitution, as under the Confederation." It is a singular coincidence, that while Mr. Banks was speaking in the House of Representatives in Boston, a very interesting debate was taking place in the Senate of the United States, in which Messrs. Webster and Cal-

houn were the chief speakers. Throughout the debate, and by Mr. Webster especially and over and over again, it was admitted and affirmed that the Constitution was the result of compromises, touching the matter of slavery; and it was also assumed, as a matter beyond question, that, in some respects, the Constitution was a compact.

ORDINANCE OF 1787.

[This copy of the Ordinance shows the amendments made in Congress on the 12th of July to Mr. Carrington's report of the 11th. All that was struck out is printed in [*italic,*] what was inserted is in SMALL CAPITALS.]

An Ordinance for the Government of the Territory of the United States, Northwest of the River Ohio.

Be it ordained by the United States in Congress assembled, That the said territory, for the purposes of temporary government, be one district; subject, however, to be divided into two districts, as future circumstances may, in the opinion of Congress, make it expedient.

Be it ordained by the authority aforesaid, That the estates both of resident and non-resident proprietors in the said territory, dying intestate, shall descend to and be distributed among their children and the descendants of a deceased child in equal parts, the descendants of a deceased child or grand-child to take the share of their deceased parent in equal parts among them; and where there shall be no children or descendants, then in

equal parts to the next of kin, in equal degree; and among collaterals, the children of a deceased brother or sister of the intestate shall have in equal parts among them their deceased parent's share; AND THERE SHALL IN NO CASE BE A DISTINCTION BETWEEN KINDRED OF THE WHOLE AND HALF BLOOD; saving in all cases to the widow of the intestate her third part of the real estate for life, and [*where there shall be no children of the intestate*] one-third part of the personal estate; and this law relative to descents and dower shall remain in full force until altered by the Legislature of the district. And until the Governor and Judges shall adopt laws as hereinafter mentioned, estates in the said territory may be devised or bequeathed by wills in writing, signed and sealed by him or her in whom the estate may be, (being of full age,) and attested by three witnesses; and real estates may be conveyed by lease and re-lease, or bargain and sale, signed, sealed, and delivered by the person, being of full age, in whom the estate may be, and attested by two witnesses, provided such wills be duly proved, and such conveyances be acknowledged, or the execution thereof duly proved, and be recorded within one year after proper magistrates, courts, and registers shall be appointed for that purpose; and personal property may be transferred by delivery, saving, however, to the [*inhabitants of Kaskaskies and Post Vincent*] FRENCH AND CANADIAN INHABITANTS, AND OTHER SETTLERS OF THE KASKASKIES, SAINT VINCENT'S, AND THE NEIGHBORING VILLAGES, WHO HAVE HERETOFORE PROFESSED THEMSELVES CITIZENS OF VIRGINIA, their laws and customs now in force among them relative to the descent and conveyance of property.

Be it ordained by the authority aforesaid, That there shall be appointed from time to time, by Congress, a Governor, whose commission shall continue in force for the term of three years, unless sooner revoked by Congress; he shall reside in the district, and have a freehold estate therein, in one thousand acres of land, while in the exercise of his office.

There shall be appointed from time to time, by Congress, a Secretary, whose commission shall continue in force for four years, unless sooner revoked; he shall reside in the district, and have a freehold estate therein, in five hundred acres of land, while in the exercise of his office. It shall be his duty to keep and preserve the acts and laws passed by the Legislature, and the public records of the district, and the proceedings of the Governor in his executive department, and transmit authentic copies of such acts and proceedings every six months

to the Secretary of Congress. There shall also be appointed a Court to consist of three judges, any two of whom to form a Court, who shall have a common law jurisdiction, and reside in the district, and have each therein a freehold estate in five hundred acres of land, while in the exercise of their offices; and their commissions shall continue in force during good behavior.

The Governor and Judges, or a majority of them, shall adopt and publish in the district such laws of the original States, criminal and civil, as may be necessary and best suited to the circumstances of the district, and report them to Congress from time to time, which laws shall be in force in the District until the organization of the General Assembly therein, unless disapproved of by Congress; but afterwards the Legislature shall have authority to alter them as they shall think fit.

The Governor for the time being shall be commander-in-chief of the militia, appoint and commission all officers in the same below the rank of general officers; all GENERAL officers [*above that rank*] shall be appointed and commissioned by Congress.

Previous to the organization of the General Assembly, the Governor shall appoint such magistrates and other civil officers, in each county or township, as he shall find necessary for the preservation of the peace and good order in the same. After the General Assembly shall be organized, the powers and duties of magistrates and other civil officers shall be regulated and defined by the said Assembly; but all magistrates and other civil officers, not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the Governor.

For the prevention of crimes and injuries, the laws to be adopted or made shall have force in all parts of the district, and for the execution of process, criminal and civil, the Governor shall make proper divisions thereof; and he shall proceed from time to time, as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished into counties and townships, subject, however, to such alterations as may thereafter be made by the Legislature.

So soon as there shall be five thousand free male inhabitants, of full age, in the district, upon giving proof thereof to the Governor, they shall receive authority, with time and place, to elect Representatives from their counties or townships, to represent them in the General Assembly; provided that, for ev-

ery five hundred free male inhabitants, there shall be one representative, and so on progressively with the number of free male inhabitants shall the right of representation increase, until the number of representatives shall amount to twenty-five, after which the number and proportion of representatives shall be regulated by the Legislature: provided that no person be eligible or qualified to act as a representative unless he shall have been a citizen of one of the United States three years and be a resident in the district, or unless he shall have resided in the district three years, and in either case shall likewise hold in his own right, in fee simple, two hundred acres of land within the same: Provided also, that a freehold in fifty acres of land in the district, having been a citizen of one of the States, and being resident in the district, or the like freehold and two years' residence in the district, shall be necessary to qualify a man as an elector of a representative.

The Representatives thus elected shall serve for the term of two years, and, in case of the death of the Representative, or removal from office, the Governor shall issue a writ to the county or township for which he was a member, to elect another in his stead, to serve for the residue of the term.

The General Assembly, or Legislature, shall consist of the Governor, Legislative Council, and a House of Representatives. The Legislative Council shall consist of five members, to continue in office five years, unless sooner removed by Congress, any three of whom to be a quorum, and the members of the Council shall be nominated and appointed in the following manner, to wit: As soon as Representatives shall be elected, the Governor shall appoint a time and place for them to meet together, and, when met, they shall nominate ten persons, residents in the district, and each possessed of a freehold in five hundred acres of land, and return their names to Congress; five of whom Congress shall appoint and commission to serve as aforesaid; and whenever a vacancy shall happen in the Council, by death or removal from office, the House of Representatives shall nominate two persons, qualified as aforesaid, for each vacancy, and return their names to Congress; one of whom Congress shall appoint and commission for the residue of the term; and every five years, four months at least before the expiration of the time of service of the members of Council, the said House shall nominate ten persons, qualified as aforesaid, and return their names to Congress, five of whom Congress shall appoint and commission to serve as members of the

Council five years, unless sooner removed. And the Governor, Legislative Council, and House of Representatives, shall have authority to make laws in all cases for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills having passed by a majority in the House, and by a majority in the Council, shall be referred to the Governor for his assent; but no bill or legislative act whatever shall be of any force without his assent. The Governor shall have power to convene, prorogue, and dissolve the General Assembly, when in his opinion it shall be expedient.

The Governor, Judges, Legislative Council, Secretary, and such other officers as Congress shall appoint in the district, shall take an oath or affirmation of fidelity and of office, the Governor before the President of Congress, and all other officers before the Governor. As soon as a Legislature shall be formed in the district, the Council and House, assembled in one room, shall have authority by joint ballot to elect a delegate to Congress, who shall have a seat in Congress, with a right of debating, but not of voting, during this temporary government.

And for extending [*to all parties of the Confederacy*] the fundamental principles of civil and religious liberty which form the basis whereon these Republics, their laws and constitutions are erected; to fix and establish those principles as the basis of all laws, constitutions, and governments, which forever hereafter shall be formed in the said territory: to provide also for the establishment of States, and permanent government therein, and for their admission to a share in the Federal Councils on an equal footing with the original States, at as early periods as may be consistent with the general interest:

It is hereby ordained and declared by the authority aforesaid. That the following articles shall be considered as articles of compact between the original States and the People and States in the said territory, and forever remain unalterable, unless by common consent, to wit:

Article the First. No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments in the said territory.

Article the Second. The inhabitants of the said territory shall always be entitled to the benefits of the writ of habeas corpus and of the trial by jury; of a proportionate representa-

tion of the people in the Legislature, and of judicial proceedings according to the course of the common law; all persons shall be bailable unless for capital offences, where the proof shall be evident or the presumption great: all fines shall be moderate, and no cruel or unusual punishment shall be inflicted; no man shall be deprived of his liberty or property but by the judgment of his peers, or the law of the land: and should the public exigencies make it necessary for the common preservation to take any person's property, or to demand his particular services, full compensation shall be made for the same; and, in the just preservation of rights and property, it is understood and declared that no law ought ever to be made or have force in the said territory that shall in any manner whatever interfere with or affect private contracts or engagements, bona fide and without fraud previously formed.

Article the Third. [*Institutions for the promotion of*] religion [and] morality, AND KNOWLEDGE, BEING NECESSARY TO GOOD GOVERNMENT AND THE HAPPINESS OF MANKIND, schools and the means of education shall forever be encouraged, [*and all persons while young shall be taught some useful occupation.*] The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights and liberty they never shall be invaded or disturbed, unless in just and lawful wars, authorised by Congress; but laws founded in justice and humanity shall from time to time be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.

Article the Fourth. The said territory and the States which may be formed therein, shall forever remain a part of this Confederacy of the United States of America, subject to the articles of Confederation, and to such alterations therein as shall be constitutionally made; and to all the acts and ordinances of the United States in Congress assembled, conformable thereto. The inhabitants and settlers in the said territory shall be subject to pay a part of the Federal debts, contracted or to be contracted, and a proportional part of the expenses of Government, to be apportioned on them by Congress, according to the same common rule and measure by which apportionments thereof shall be made on the other States; and the taxes for paying their proportion shall be laid and levied by the authority and direction of the Legislature of the district or districts, or new States, as in the original States within the time

agreed upon by the United States in Congress assembled. The Legislatures of those districts, or new States, shall never interfere with the primary disposal of the soil by the United States in Congress assembled, nor with any regulations Congress may find necessary for securing the title in such soil to the bona fide purchasers. No tax shall be imposed on lands the property of the United States; and in no case shall non-resident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and St. Lawrence and the carrying places between the same shall be common highways, and forever free, as well to the inhabitants of the said territory as to the citizens of the United States, and those of any other States that may be admitted into the Confederacy, without any tax, impost, or duty therefor.

Article the Fifth. There shall be formed in the said territory not less than three nor more than five States; and the boundaries of the States, as soon as Virginia shall alter her act of cession and [*authorize*] CONSENT TO the same, shall become fixed and established as follows, to wit: The western State in THE said territory shall be bounded by the Mississippi, the Ohio, and Wabash rivers; a direct line drawn from the Wabash and Post Vincent's due north to the territorial line between the United States and Canada, and by THE said territorial line to the Lake of the Woods and Mississippi. The middle State shall be bounded by the said direct line, the Wabash from Post Vincent's to the Ohio; by the Ohio, by a direct line drawn due north from the mouth of the great Miami to THE said territorial line, and by THE said territorial line. The eastern State shall be bounded by the last mentioned direct line, the Ohio, Pennsylvania, and the said territorial line: Provided, however, and it is further understood and declared, that the boundaries of these three States shall be subject so far to be altered, that if Congress shall hereafter find it expedient, they shall have authority to form one or two States in that part of the said territory which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan: and whenever any of the said States shall have sixty thousand free inhabitants therein, such state shall be admitted by its delegates into the Congress of the United States, on an equal footing with the original States in all respects whatever; and shall be at liberty to form a permanent constitution and State government: Provided the constitution and government so to be formed shall be republican, and in conformity to

the principles contained in these articles; and, so far as it can be consistent with the general interest of the Confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of inhabitants in the State than sixty thousand.

Article the Sixth. THERE SHALL BE NEITHER SLAVERY NOR INVOLUNTARY SERVITUDE IN THE SAID TERRITORY, OTHERWISE THAN IN PUNISHMENT OF CRIMES WHEREOF THE PARTY SHALL HAVE BEEN DULY CONVICTED: PROVIDED ALWAYS, THAT ANY PERSON ESCAPING INTO THE SAME, FROM WHOM LABOR OR SERVICE IS LAWFULLY CLAIMED IN ANY ONE OF THE ORIGINAL STATES, SUCH FUGITIVE MAY BE LAWFULLY RECLAIMED AND CONVEYED TO THE PERSON CLAIMING HIS OR HER LABOR OR SERVICE AS AFORESAID.

Be it ordained by the authority aforesaid, That the resolutions of the 23d of April, 1784, RELATIVE TO THE SUBJECT OF THIS ORDINANCE, be and the same are hereby repealed and declared null and void.

Done by the United States in Congress assembled, the 13th day of July, in the year of our Lord 1787, and of their sovereignty and independence the 12th.

CHARLES THOMSON, Sec'y.